

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 Adv. Pro. No. 08-01789 (SMB)
4 SIPA LIQUIDATION (Substantively Consolidated)
5 - - - - - x
6 SECURITIES INVESTOR PROTECTION CORPORATION,
7 Plaintiff,
8 v.
9 BERNARD L. MADOFF INVESTMENT SECURITIES LLC,
10 Defendant.
11 - - - - - x
12 In the Matter of:
13 BERNARD L. MADOFF,
14 Debtor.
15 - - - - - x
16 Adv. Pro. No. 09-01305 (SMB)
17 - - - - - x
18 IRVING H. PICARD, Trustee for the Liquidation
19 of Bernard L. Madoff Investment Securities LLC,
20 Plaintiff,
21 v.
22 COHMAD SEC. CORP., ET AL.,
23 Defendant.
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25

1 - - - - - x

2 Adv. Pro. No. 10-04925 (SMB)

3 - - - - - x

4 IRVING H. PICARD, Trustee for the Liquidation
5 of Bernard L. Madoff Investment Securities LLC,
6 Plaintiff,

7 v.

8 ALVIN GINDEL REVOCABLE TRUST, A FLORIDA TRUST, ET AL.,
9 Defendant.

10 - - - - - x

11 Adv. Pro. No. 10-04401 (SMB)

12 - - - - - x

13 IRVING H. PICARD, Trustee for the Liquidation
14 of Bernard L. Madoff Investment Securities LLC,
15 Plaintiff,

16 v.

17 ROSE GINDEL TRUST, ET AL.,
18 Defendant.

19 - - - - - x

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1 Adv. Pro. No. 10-04861 (SMB)

2 - - - - - x

3 IRVING H. PICARD, Trustee for the Liquidation
4 of Bernard L. Madoff Investment Securities LLC,
5 Plaintiff,

6 v.

7 HAROLD J. HEIN,
8 Defendant.

9 - - - - - x

10 Adv. Pro. No. 10-05286 (SMB)

11 - - - - - x

12 IRVING H. PICARD, Trustee for the Liquidation
13 of Bernard L. Madoff Investment Securities LLC,
14 Plaintiff,

15 v.

16 LEGACY CAPITAL LTD.,
17 Defendant.

18 - - - - - x

19
20 United States Bankruptcy Court
21 One Bowling Green
22 New York, NY 10004
23

24 September 5, 2019

25 10:06 AM

1 B E F O R E :

2 HON STUART M. BERNSTEIN

3 U.S. BANKRUPTCY JUDGE

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5 ECRO: JONATHAN

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1 HEARING re Application for Interim Professional Compensation
2 / Twenty-Ninth Application of Windels Marx Lane &
3 Mittendorf, LLP for Allowance of Interim Compensation for
4 Services Rendered and Reimbursement of Actual and Necessary
5 Expenses Incurred from December 1, 2018 through March 31,
6 2019 and Request for Partial Release of Holdback for Windels
7 Marx Lane & Mittendorf, LLP, Special Counsel, period:
8 12/1/2018 to 3/31/2019, fee:\$1,818,000.0, expenses:
9 \$15,764.90.

10

11 Application for Interim Professional Compensation /Thirtieth
12 Application of Trustee and Baker & Hostetler LLP for
13 Allowance of Interim Compensation for Services Rendered and
14 Reimbursement of Actual and Necessary Expenses Incurred from
15 December 1, 2018 through March 31, 2019 for Baker &
16 Hostetler, L.L.P., Trustee's Attorney, period: 12/1/2018 to
17 3/31/2019, fee:\$31008908.43, expenses: \$495,036.96.

18

19 Application for Interim Professional Compensation
20 /Application of Schiltz & Schiltz as Special Counsel to the
21 Trustee for Allowance of Interim Compensation for Services
22 Rendered and Reimbursement of Expenses Incurred from
23 December 1, 2018 through March 31, 2019 and for Release of a
24 Portion of Fees Held Back for Schiltz & Schiltz, Special
25 Counsel, period: 12/1/2018 to 3/31/2019, fee:\$17,403.93,

1 expenses: \$1,131.26.

2

3 Application for Interim Professional Compensation

4 /Application of Higgs & Johnson (Formerly Higgs Johnson

5 Truman Bodden & Co.) as Special Counsel to the Trustee for

6 Allowance of Interim Compensation for Services Rendered and

7 Reimbursement of Expenses Incurred from December 1, 2018

8 through March 31, 2019 and for Release of a Portion of Fees

9 Held Back for Higgs & Johnson, Special Counsel, period:

10 12/1/2018 to 3/31/2019, fee:\$10,863.86, expenses: \$101.00.

11

12 Application for Interim Professional Compensation /

13 Application of Soroker Agmon Nordman as Special Counsel to

14 the Trustee for Allowance of Interim Compensation for

15 Services Rendered and Reimbursement of Expenses Incurred

16 from December 1, 2018 through March 31, 2019 and for Release

17 of a Portion of Fees Held Back for Sorokor - Agmon, Special

18 Counsel, period: 12/1/2018 to 3/31/2019, fee:\$444,872.64,

19 expenses: \$2,075.95.

20

21 Application for Interim Professional Compensation

22 /Application of Graf & Pitkowitz Rechtsanwalte GMBH as

23 Special Counsel to the Trustee for Allowance of Interim

24 Compensation for Services Rendered and Reimbursement of

25 Expenses Incurred from December 1, 2018 through March 31,

1 2019 and for Release of a Portion of Fees Held Back for Graf
2 & Pitkowitz Rechtsanwälte GMBH, Special Counsel, period:
3 12/1/2018 to 3/31/2019, fee:\$73,147.11, expenses: \$2,295.78.

4
5 Application for Interim Professional Compensation
6 /Application of Ritter Schierscher Rechtsanwälte as Special
7 Counsel to the Trustee for Release of a Portion of Fees Held
8 Back.

9
10 Application for Interim Professional Compensation
11 /Application of Young Conaway Stargatt & Taylor, LLP as
12 Special Counsel to the Trustee for Allowance of Interim
13 Compensation for Services Rendered and Reimbursement of
14 Expenses Incurred from December 1, 2018 through March 31,
15 2019 and for Release of a Portion of Fees Held Back for
16 Young Conaway Stargatt & Taylor, LLP, Special Counsel,
17 period: 12/1/2018 to 3/31/2019, fee:\$14,316.03, expenses:
18 \$28.02.

19
20 Application for Interim Professional Compensation
21 /Application of Williams, Barristers & Attorneys as Special
22 Counsel to the Trustee for Allowance of Interim Compensation
23 for Services Rendered from December 1, 2018 through March
24 31, 2019 and for Release of a Portion of Fees Held Back for
25 Williams, Barristers & Attorneys, Special Counsel, period:

1 12/1/2018 to 3/31/2019, fee:\$167,417.10, expenses: \$0.

2

3 Application for Interim Professional Compensation

4 /Application of UGGC & Associates as Special Counsel to the

5 Trustee for Allowance of Interim Compensation for Services

6 Rendered from December 1, 2018 through March 31, 2019 and

7 for Release of a Portion of Fees Held Back for UGGC &

8 Associates, Special Counsel, period: 12/1/2018 to 3/31/2019,

9 fee:\$84,140.21, expenses: \$0.

10

11 Application for Interim Professional Compensation

12 /Application of Browne Jacobson, LLP as Special Counsel to

13 the Trustee for Allowance of Interim Compensation for

14 Services Rendered and Reimbursement of Expenses Incurred

15 from December 1, 2018 through March 31, 2019 and for Release

16 of a Portion of Fees Held Back for Browne Jacobson, LLP,

17 Special Counsel, period: 12/1/2018 to 3/31/2019,

18 fee:\$684,411.85, expenses: \$30,257.92.

19

20 Application for Interim Professional Compensation

21 /Application of Eugene F. Collins as Special Counsel to the

22 Trustee for Allowance of Interim Compensation for Services

23 Rendered and Reimbursement of Expenses Incurred from

24 December 1, 2018 through March 31, 2019 and for Release of a

25 Portion of Fees Held Back for Eugene F. Collins, Special

1 Counsel, period: 12/1/2018 to 3/31/2019, fee:\$17,158.65,
2 expenses: \$5.47.

3
4 Application for Interim Professional Compensation
5 /Application of Robbins, Russell, Englert, Orseck,
6 Untereiner & Sauber LLP as Special Counsel to the Trustee
7 for Allowance of Interim Compensation for Services Rendered
8 and Reimbursement of Expenses Incurred from December 1, 2018
9 through March 31, 2019 and for Release of a Portion of Fees
10 Held Back for Robbins, Russell, Englert, Orseck, Untereiner
11 & Sauber LLP, Special Counsel, period: 12/1/2018 to
12 3/31/2019, fee:\$4,070.25, expenses: \$121.88.

13
14 Application for Interim Professional Compensation
15 /Application of Scaletta Law Firm, PLLC as Special Counsel
16 to the Trustee for Allowance of Interim Compensation for
17 Services Rendered and Reimbursement of Expenses Incurred
18 from December 1, 2018 through March 31, 2019 and for Release
19 of a Portion of Fees Held Back for Scaletta Law Firm, PLLC,
20 Special Counsel, period: 12/1/2018 to 3/31/2019,
21 fee:\$17,277.30, expenses: \$42.44.

22
23 Application for Interim Professional Compensation
24 /Application of SCA Creque as Special Counsel to the Trustee
25 for Allowance of Interim Compensation for Services Rendered

1 from August 1, 2018 through March 31, 2019 and for Release
2 of a Portion of Fees Held Back for SCA Creque, Special
3 Counsel, period: 8/1/2018 to 3/31/2019, fee:\$2,705.62,
4 expenses: \$160.00.

5
6 Application for Interim Professional Compensation
7 /Application of Kugler Kandestin, L.L.P. as Special Counsel
8 to the Trustee for a Release of a Portion of Fees Previously
9 Held for the Prior Compensation Periods

10
11 Application for Interim Professional Compensation
12 /Application of Werder Vigano as Special Counsel to the
13 Trustee for Allowance of Interim Compensation for Services
14 Rendered from December 1, 2018 through March 31, 2019 and
15 for Release of a Portion of Fees Held Back for Werder
16 Vigano, Special Counsel, period: 12/1/2018 to 3/31/2019,
17 fee:\$429.96, expenses: \$0.00.

18
19 Application for Interim Professional Compensation
20 /Application of Bedell Cristin Guernsey Partnership as
21 Special Counsel to the Trustee for a Release of a Portion of
22 Fees Previously Held for the Prior Compensation Periods.

23
24 Application for Interim Professional Compensation /
25 Application of Munari Giudici Maniglio Panfili E Associates

1 as Special Counsel to the Trustee for a Release of a Portion
2 of Fees Previously Held for the Prior Compensation Periods.

3

4 Application for Interim Professional Compensation /
5 Application of La Tanzi, Spaulding & Landreth, P.C. as
6 Special Counsel to the Trustee for a Release of a Portion of
7 Fees Previously Held for the Prior Compensation Periods.

8

9 Application for Interim Professional Compensation
10 /Application of Kelley, Wolter & Scott, Professional
11 Association as Special Counsel to the Trustee for a Release
12 of a Portion of Fees Previously Held for the Prior
13 Compensation Periods.

14

15 Application for Interim Professional Compensation
16 /Application of Cochran Allan as Special Counsel to the
17 Trustee for a Release of a Portion of Fees Previously Held
18 for the Prior Compensation Periods.

19

20 09-01305-smb - Irving H. Picard, Trustee for the Liquidation
21 of B v. Kurzrok et al
22 Conference

23

24 10-04357-smb - Irving H. Picard, Trustee for the Liquidation
25 of B v. Greiff

1 Conference (also applies to Adv. Proc. Nos. 10-04925, 10-
2 04401, 10-04861)
3
4 10-05286-smb - Irving H. Picard, Trustee for the Liquidation
5 of B v. Legacy Capital Ltd. et al
6 Pre-Trial Conference
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Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 BAKERHOSTETLER

4 Attorneys for the Trustee

5 45 Rockefeller

6 New York, NY 10111

7

8 BY: DEAN D. HUNT

9 OREN J. WARSHAVSKY

10 JASON OLIVER

11 TATIANA MARKEL

12 DAVID J. SHEEHAN

13 FRANK M. OLIVA

14 NICHOLAS J. CREMONA

15 KATHYRN M. ZUNNO

16

17 STEVENS & LEE

18 Attorneys for Legacy Capital

19 485 Madison Avenue, 20th Floor

20 New York, NY 10022

21

22 BY: NICHOLAS F. KAJON

23

24

25

1 P R O C E E D I N G S

2 THE COURT: Madoff. Let's start with the fee
3 applications. I think some of the counsel may be delayed
4 downstairs.

5 MR. SHEEHAN: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. SHEEHAN: Today is the return date, the 30th,
8 interim fee application of the trustee and his counsel,
9 Irving Picard and BakerHostetler.

10 THE COURT: How many days is that, Mr. Bell?

11 MR. BELL: 3,920.

12 THE COURT: Thank you. Go ahead.

13 MR. SHEEHAN: What I'd like to talk about here
14 this morning just a little bit, as Your Honor knows, I talk
15 about the foreign counsel. And two of the foreign counsel
16 who have very expansive applications are the ones in London,
17 and that's Browne Jacobson, and ones in Bermuda, and that's
18 Williams (indiscernible).

19 And the reason for that, of course, is, as Your
20 Honor is well aware, the Kingate case has settled. The
21 reason that settled is because all the intense work during
22 the (indiscernible) period, which caused them to create
23 large billable hours during that period of time. There were
24 depositions that took place and a lot of motion practice in
25 England. A lot of depositions in Bermuda as well.

1 So those two applications are reflective of what
2 actually happened in Kingate, which shouldn't actually occur
3 until the last reporting period. But going back to the 30th
4 one, that's when all the time is accumulated there.

5 A lot of time is also accumulated in the Israeli
6 action. That's Magnify. Your Honor is familiar with that,
7 of course.

8 THE COURT: What's happening with that? Wasn't
9 there mediation in that?

10 MR. SHEEHAN: Well, actually, there's two
11 mediations going on as we speak. Well, not two at the same
12 time, I should say. Israel happened already in May.
13 There's another one about to commence next week. There's an
14 effort to both resolve the U.S. action, of course, and the
15 Israeli action. We're trying to (indiscernible). The other
16 side hopefully will see the wisdom of doing that and get rid
17 of the case, which we would like to do. But if it doesn't,
18 we'll proceed. Disclosure has taken place, discovery on
19 both sides. More of a disclosure in Israel than there is
20 discovery. Here, just like England, give them all your
21 documents, and that's what we've done. So that's another
22 one of the larger applications.

23 In terms of the firm itself, as you know, we're
24 here fairly often. You know what's going on in most of the
25 cases. We are proceeding apace with the appeal to the Court

1 that that is happening, the opposition we just filed on last
2 week. We are now preparing our response to that. And a
3 petition for certiorari said that's going to take us
4 probably into the beginning of next year until that's
5 decided.

6 In the interim, we are working on the over 80
7 cases that are now encompassed by that ruling, so they will
8 be prepared so that Your Honor doesn't say, well, what were
9 you doing for the last eight months? Which you may say
10 anyway, but we'll -- yeah.

11 THE COURT: Probably.

12 MR. SHEEHAN: But in any event --

13 THE COURT: Or the last 10 years.

14 MR. SHEEHAN: We're trying to forestall you from
15 saying that to us, at least too often.

16 THE COURT: How many days?

17 MR. SHEEHAN: In any event, we're working pretty
18 hard on all those cases. And we're revisiting, of course,
19 the standards that apply to each of them so that we can
20 craft our amended complaints to comply with those new
21 standards that are placed.

22 There are also the continuing cases, and many of
23 them are now before Your Honor here today, and subsequently
24 we shall see them, various motions to dismiss, trials, etc.

25 In the good-faith cases, I become very active.

1 You know, the Nelson case and other cases that are before
2 Your Honor right now. But behind those are over 100 good-
3 faith cases still yet to be tried. We'd like to resolve
4 them. We thought there would be a cascading event at some
5 point in those cases. That is not happening. We tried to
6 settle other cases. That doesn't seem to happen either.
7 We've had insurmountable obstacles to get past.

8 So in any event, the teams have been working very
9 hard. Of course, we always have. Mr. (indiscernible) as a
10 trustee from -- of the estate of Bernie Madoff. And he is
11 here, and his firm has been instrumental of course in
12 assisting as in all these cases, not just in the cases where
13 there's conflict but also cases beyond our capabilities
14 where we need the assistance of outside counsel.

15 There are other counsel I haven't mentioned here
16 this morning. All these applications have been made before
17 Your Honor. I should note that in all of them there is a
18 request to allow the holdback up to 50 percent for our firm
19 as well as for all the others. This is a recognition by
20 SIPC of the work that has been achieved to date. There is
21 still an extensive holdback associated with each of the
22 firms, so they take that into account in allowing us to go
23 forward with that.

24 So at the end of the day what I would ask Your
25 Honor is to approve the application of Baker, the trustee,

1 and all of the associate counsel. Thank you.

2 THE COURT: Thank you. Mr. Bell? Sorry I stole
3 your thunder.

4 MR. BELL: No, Your Honor. I'm Kevin Bell on
5 behalf of the Securities Investor Protection Corporation.
6 This is the 129th month of the liquidation proceeding.
7 We're dealing with Baker's fees for months 120 through 123.
8 We -- meaning me -- read every entry of every invoice of --
9 that Baker sends to us. We ask questions. We make comments
10 if there are revisions.

11 THE COURT: I assume you read every one of the --
12 somebody reads every one of the applications.

13 MR. BELL: I read every one.

14 THE COURT: Okay, not just Baker's.

15 MR. BELL: Hm?

16 THE COURT: Not just Baker's.

17 MR. BELL: I'm sorry? Not just Baker. No, I have
18 -- Windels puts in a lot of hours too, and then we --
19 actually, I think we have 24 fee applications up for the
20 Court, and all those invoices get vetted by me, and I make
21 my comments, and there are adjustments that are made as we
22 go forward.

23 Mr. Sheehan's given you a summary of all the
24 actions that are going on, and he and I, I think, talk
25 multiple times a day regarding this, or I talk to the

1 specific Baker or Windels lawyer that are dealing with these
2 matters.

3 We have submitted our recommendations, and I would
4 highlight two points there. With regard to Baker, this is
5 the 30th fee application, and in Paragraph 6, we point out
6 that with the 10 percent discount that we had negotiated in
7 the beginning of the case and the adjustments, the total
8 adjustment's about 14.7 percent of fees that they would
9 normally charge ordinary clients.

10 This is the 29th fee application of Windels Marx,
11 and in -- we note in Paragraph 3 that the reduction there is
12 16.65 percent across the board. Similar adjustments have
13 been made.

14 As you know, this is the once-a-year catchup on
15 reducing the holdback, and SIPC is very supportive of that.
16 The firm shouldn't be carrying that type of holdback. We
17 figure the holdback as -- if the Court approves the
18 reduction, the holdback that would still be going forward is
19 sufficient.

20 As we -- as we move forward, Mr. Sheehan's given
21 you a snapshot of the future. There are, I think, little --
22 129 active good-faith cases. Six of them are in the process
23 of settling. Most of them are with a couple of counsel, and
24 you've seen some of that happening in the last month -- week
25 or so. Hopefully we could get to that point in time.

1 We have received last week the petition for
2 certiorari in the extraterritoriality, and that work will be
3 being done by SIPC and the trustee in responding to that, so
4 that'll be a big tranche of work as we move forward in this
5 month, 129th and through future.

6 THE COURT: When is the response due?

7 MR. BELL: Well, if -- the other side had had
8 asked for a 30-day extension because of what they filed. I
9 expect that the trustee and SIPC will ask for 30 days, so
10 it'll be the eve of Halloween if the Court grants the normal
11 30-day extension.

12 And so figure they'll reply and the package will
13 go to the Court sometime around Thanksgiving or thereabouts
14 based on the best prognostication of reading the Supreme
15 Court practice.

16 So we'll see how quickly the Court has a
17 conference and decides whether cert is granted or not. And
18 that will predict how the 88 underlying cases that are tied
19 up in the decision you made, Your Honor, and that the
20 circuit made will be addressed, and that will be another
21 tranche of work that we will see going into the future.

22 THE COURT: All right.

23 MR. BELL: SIPC as well aware of what we're --

24 THE COURT: Hold it down, please.

25 MR. BELL: -- of what we're doing -- and as Your

1 Honor knows, the order you entered on the 10th -- the 10th
2 allocation distribution motion was actualized by
3 distributions to customers on February 22nd of this year so
4 that in this what some people call the biggest fraud, the
5 biggest Ponzi in world's history, the trustee has delivered
6 into the hands of each and every one of the victims who had
7 an allowed claim 66.633 percent.

8 I think if the BVI and Bermuda courts approve the
9 Kingate settlement as Your Honor did on August 8th, that
10 there will be an 11th allocation motion in the near future,
11 and I think that will bring us up to near --

12 THE COURT: Hold on for a second.

13 MR. BELL: -- 69 to 70 percent distribution.

14 THE COURT: Hold it down back there, please. If
15 you want to talk, talk out in the hallway.

16 MR. BELL: So based on all those and SIPC's
17 recommendation and statutory provision, which Your Honor
18 always cites to me, SIPC would ask the Court to approve
19 these fee applications.

20 THE COURT: Is -- are -- is the estate
21 administratively insolvent?

22 MR. BELL: Until we get to the point --

23 THE COURT: Until you get 100 percent. I
24 understand that.

25 MR. BELL: 100 percent distribution, which --

1 THE COURT: What's -- what's --

2 MR. BELL: I'm always hopeful, Your Honor.

3 THE COURT: Yeah, I know.

4 MR. BELL: You know, maybe the Mets make the World
5 Series this year. Who knows? So --

6 THE COURT: Could happen.

7 MR. BELL: Hey, look. They beat the Nationals
8 yesterday, so --

9 THE COURT: Big deal.

10 MR. BELL: But they lost the night before with
11 seven runs in the bottom of the ninth, so you never know.

12 THE COURT: They should've only played eight
13 innings.

14 MR. BELL: And we never know what the Supreme
15 Court's going to do on the petition for certiorari, and we
16 don't know what's going to happen in those 88 cases that
17 will be back before Your Honor.

18 THE COURT: Mh hmm.

19 MR. BELL: So the potential is there, but at this
20 moment in time on these fee applications, this estate is not
21 solvent.

22 THE COURT: Okay.

23 MR. BELL: And so therefore the SIPA statute
24 provisions are in play, and SIPC strongly recommends your
25 approval.

1 THE COURT: Is there anyone else who wants to be
2 heard in connection with the fee applications? Hearing no
3 response and in light of SIPC's recommendation and the
4 constraints on the Court, I will grant the applications.
5 You can submit an order.

6 MR. BELL: Thank you, Your Honor.

7 MR. SHEEHAN: Thank you, Your Honor.

8 THE COURT: We'll do the pretrial conferences now,
9 or the conferences. You can take that.

10 All right. Let's start with, I guess the estate
11 of Berman is the first named defendant. Who's handling
12 these for the trustee?

13 MS. ZUNNO: I am, Your Honor.

14 THE COURT: Okay.

15 MS. ZUNNO: Hello, Your Honor. Kathryn Zunno of
16 BakerHostetler on behalf of the trustee.

17 THE COURT: All right. The reason that I
18 scheduled this conference is I'm not inclined to grant any
19 further extensions. This case is over 10 years old. The
20 deadline for expert discovery is when?

21 MS. ZUNNO: It's 45 days after -- the first
22 trigger for an expert disclosure is 45 days after the close
23 of discovery.

24 And if I could just give a little bit of context,
25 Your Honor, for the request --

1 THE COURT: Sure.

2 MS. ZUNNO: -- I think that would be helpful. The
3 two main reasons for the request, first, is to conclude a
4 mediation that's currently pending before Judge Cyganowski.
5 And two, hopefully finalize that settlement with three of
6 the remaining five defendants in the case, normally Richard
7 Spring who was a Cohmad registered representative, and two
8 of his related trusts.

9 We are inches away from finalizing that
10 settlement, and I would --

11 THE COURT: You know, I've been hearing about this
12 for years, I think.

13 MS. ZUNNO: I -- probably about a year.

14 THE COURT: Right.

15 MS. ZUNNO: I agree. Without revealing
16 confidential --

17 THE COURT: I'm not interested in confidential
18 discussions.

19 MS. ZUNNO: -- settlement discussions, we are
20 working very hard to finish it.

21 THE COURT: Right.

22 MS. ZUNNO: The mediator, Judge Cyganowski, is
23 supportive of the extra time to get it across the finish
24 line. We are, I would hope, a day or two away from
25 finalizing the term sheet. And then we just need a couple

1 of weeks to finalize the settlement agreement itself. Given
2 all the effort that's been put into this, it'll be -- we
3 really would like to see it get there, and we hope we can.

4 And once that settlement is finalized -- which
5 again we hope is very imminent -- there are only two
6 defendants left in the case. One is Morton Kurzrok who is
7 -- who would then be the only remaining Cohmad registered
8 representative and the only remaining bad-faith defendant in
9 the case. And the other is Jane Delaire who is a good-faith
10 defendant -- essentially, a good-faith defendant against
11 whom we've made clear to her we are only seeking the two-
12 year fictitious profit transfer number in connection with
13 her IA account.

14 And we've been very successful in this case,
15 streamlining it and funneling the number of defendants and
16 the issues. We started with 30 defendants. Since discovery
17 opened, we've settled with 18 more, and we would hope that
18 the extra time will help either resolve the remaining two,
19 you know, cases against the remaining defendants and just
20 give us the opportunity to essentially wrap up discovery.
21 There are a couple of additional depositions that need to be
22 done, but discovery is significantly complete.

23 THE COURT: It should be after 10 years.

24 Look, I hear you. There's nothing that prevents
25 you from settling this case. This case has been going on,

1 as I said, for 10 years. You can complete the mediation.
2 If you can settle it, fine. Otherwise, I'm just inclined to
3 schedule a trial and try it.

4 MS. ZUNNO: I mean, I would propose, Your Honor,
5 if six months is too long if we could do a month or two just
6 to --

7 THE COURT: You told me you're two days away from
8 a term sheet in the mediation. If there -- if that matter
9 is settled in principle, you can come back to me, but you
10 have two defendants who are not settling in the case. The
11 case should be tried.

12 MS. ZUNNO: We just need some time to complete
13 depositions of those remaining defendants --

14 THE COURT: Right. And --

15 MS. ZUNNO: -- and there are strategic
16 considerations surrounding --

17 THE COURT: Well --

18 MS. ZUNNO: -- the decision to hold on that
19 because the case is significantly streamlined without the
20 Spring defendants and the Berman defendants who settled two
21 days after we submitted the amended case management plan.
22 So --

23 THE COURT: Well --

24 MS. ZUNNO: -- we really are looking for just a
25 short amount of time to wrap it up. And if six months is

1 too long, we're happy to shorten it.

2 THE COURT: You're hondling with me.

3 Yes, sir.

4 MR. NEWMAN: Good morning, Your Honor. Steve
5 Newman on behalf of the Spring defendants. I echo what the
6 trustee's counsel has said regarding the mediation that's
7 ongoing. Part of it has been a lot of scheduling with the
8 mediator, Judge Cyganowski, but she has really been
9 extremely helpful in this case. We were miles apart not
10 that long ago, and she's really been bringing us to the cusp
11 of the deal. And a lot of the delay has been purely a
12 matter of scheduling and availability with what I would call
13 shuttle diplomacy, her scheduling times to talk to one side
14 and then the other, and then trying to figure out how to
15 come up with common ground.

16 I think we've been very productive in the recent
17 weeks. If Your Honor has any questions, she indicated she'd
18 be willing to talk to Your Honor to let you know --

19 THE COURT: I don't want to hear about the
20 mediation. Certainly I don't want to hear from the
21 mediator. That would be inappropriate.

22 You can -- as I said, you can complete your
23 mediation and you can complete your discovery. This case is
24 an old case. It's one of the oldest adversary proceedings.
25 And you should complete your discovery. If you can settle

1 it, fine. If not, just try it.

2 MS. ZUNNO: I just need to know one thing, Your
3 Honor. The end of discovery, if you don't grant the -- any
4 extension, is in several days.

5 THE COURT: Mh hmm.

6 MS. ZUNNO: And that's not enough time to --

7 THE COURT: Why haven't you completed this --

8 MS. ZUNNO: -- notice depictions of the two
9 remaining defendants.

10 THE COURT: Who are the two defendants that you
11 want at this point?

12 MS. ZUNNO: One is Morton Kurzrok, who I mentioned
13 is -- would be the last remaining registered representative
14 against whom we've alleged bad faith. The other is a good-
15 faith defendant named Jane Delaire, who's proceeding pro se.

16 THE COURT: Mh hmm.

17 MS. ZUNNO: And because there are so few transfers
18 at issue with those two defendants, the remaining discovery
19 is significantly streamlined once we reach the settlement
20 with the Spring defendants, particularly in light of the
21 fact that we settled with three other defendants several
22 weeks ago.

23 THE COURT: How much time do you need to complete
24 their depositions?

25 MS. ZUNNO: We could do it within -- usually get

1 -- we give 30 days' notice. We get the deposition notices
2 out. Two months.

3 THE COURT: Get your deposition notices out. I
4 will just extend it as to those two witnesses, the 30 days,
5 so get your deposition notices out today.

6 MS. ZUNNO: Okay.

7 THE COURT: All right. You can submit a modified
8 order.

9 MS. ZUNNO: Thank you, Your Honor.

10 MR. NEWMAN: Thank you, Your Honor.

11 THE COURT: Okay. Next is the matter -- the four
12 cases with Mr. Ruger.

13 MR. CREMONA: Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. CREMONA: Dean Hunt and Nick Cremona for the
16 trustee. I think we can make this very quick. Mr. Ruger
17 and I have conferred. We've agreed that we will conduct the
18 initial mediation session or resolve each of these cases via
19 the hardship process by the end of October, subject to any
20 availability issues his clients may have which we'll work
21 out. And each party will submit its mediation statement 10
22 days prior to the mediation session. That's for all four
23 cases.

24 THE COURT: Do you -- do you have mediators in
25 this case?

1 MR. CREMONA: Yes, we do. I think Debbie
2 (indiscernible) --

3 THE COURT: Okay.

4 MR. CREMONA: -- has been assigned to all of them.
5 If not, we will work to make sure that we have the right
6 mediator in place.

7 THE COURT: So you're telling me that by the end
8 of October, these cases will either be settled or settled in
9 principle or not?

10 MR. CREMONA: Well, I think, you know, sometimes
11 in the mediation sessions, things come up that require a
12 little bit of additional time, but we will -- we will have
13 at least had our initial mediation session, so we'll know
14 whether or not we're going to get them resolved.

15 THE COURT: All right. What I'll do is -- is this
16 going to be embodied in an order or is this just going to --
17 handshake agreement that you have?

18 MR. CREMONA: We can submit an order, or it's on
19 the record here today, if that's fine with you.

20 THE COURT: All right. I need one of those
21 matters count sheets, the sheet that has the, you know, the
22 daily matters count. (Indiscernible) shows how many cases I
23 have on a particular day.

24 All right. I'm going to give you a date in
25 November. Say November 14th, okay? Come back, another

1 conference. You tell me the status.

2 MR. CREMONA: Okay. Will do, Your Honor.

3 THE COURT: At 10:00.

4 MR. CREMONA: Thank you very much. I appreciate
5 your time.

6 THE COURT: Next is Legacy. It is time to
7 schedule a trial in this case?

8 MR. WARSHAVSKY: Yes, Your Honor. Owen Warshavsky
9 of -- excuse me -- of BakerHostetler for the trustee, Your
10 Honor. The parties would like to schedule a trial for the
11 week of December 16th -- is it December 18th is the -- the
12 week of December 16th.

13 THE COURT: I don't know if that's going to work.
14 I'm missing part of my calendar to schedule it. Oh, I got
15 it. Okay. December 16th. How long do you think the trial
16 is going to take? There aren't many issues left.

17 MR. WARSHAVSKY: There are not many issues. We
18 think one day. I think, in the discussion with counsel for
19 defendants earlier this week, I think they thought it might
20 spill over to a second day. I'll let them explain it. But
21 I think a lot of it will be on submission, Your Honor.

22 THE COURT: I prefer to do it earlier in December.

23 MR. WARSHAVSKY: Your Honor, part of the
24 constraint on it is the availability of Mr. Dubinsky who may
25 be a, I guess, a rebuttal witness for the trustee. And

1 getting his -- locking his schedule down has been tough for
2 us. He's become a bit of a star, and --

3 THE COURT: I'll give you December 16th but, you
4 know, that's around the holiday time, so I may or may not be
5 here, and it may have to be moved. So why don't you get
6 some additional dates from Mr. Dubinsky.

7 MR. WARSHAVSKY: Okay. Thank you, Your Honor.

8 THE COURT: All right.

9 MR. WARSHAVSKY: We will do.

10 THE COURT: 10:00. Okay. See you then.

11 MR. WARSHAVSKY: Thank you, Your Honor.

12 MAN 1: Thank you, Your Honor.

13 THE COURT: Make sure you exchange exhibits and
14 witness lists a week before. Give me the exhibits on an
15 electronic disk. It's easier than loose leaves, frankly.
16 Okay?

17 MR. WARSHAVSKY: We will do, Your Honor. Thank
18 you.

19 THE COURT: And separate the exhibits. Don't give
20 me 10,000 pages, one exhibit, one document. Okay?

21 MR. WARSHAVSKY: We will. Thank you, Your Honor.

22 THE COURT: Thank you.

23 (Whereupon these proceedings were concluded at
24 10:31 AM)

25

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: September 9, 2019

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